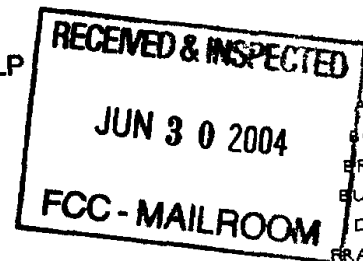


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WEIL, GOTSHAL & MANGES LLP

1501 K STREET, NW
SUITE 100
WASHINGTON, DC 20005
(202) 682-7000
FAX: (202) 857-0939



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BRUCE H. TURNBULL
DIRECT LINE (202) 682-7070
E-MAIL: bruce.turnbull@weil.com

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Docket 04-61, Ex Parte Submission

Dear Ms. Dortch:

This submission is on behalf of our client, the Digital Content Protection, LLC ("DCP"), in relation to the above-captioned proceeding in which DCP has certified its content protection technology, High bandwidth Digital Content Protection ("HDCP"), for approval by the Federal Communications Commission ("FCC" or "Commission") as a secure output technology for broadcast flag content. Specifically, this submission addresses two questions that have arisen in the course of this proceeding – the "no copy" nature of HDCP, and the "upstream obligations" issue raised in the comments submitted by the Motion Picture Association of America ("MPAA") on April 6, 2004.

With regard to HDCP's "no copy" requirement, there are four key points to make.

- HDCP was developed initially to provide content protection over the Digital Video Interface ("DVI"), which itself was a "display-only" connection from a computer to a monitor.

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- HDCP protects video content in uncompressed form, which has been and remains generally unusable for consumer copying purposes due to the enormous size of the data involved.
- Since HDCP was launched into the market in 2000, it has been licensed to many implementers and has been endorsed by a number of content providers for use with their content solely on the basis that it is to be used with video content for the sole purpose of rendering such content (one clear example is HDCP's approval as a CSS output for DVD Video). DCP is, consequently, not in a position to revisit at this time the possibility that video content protected by HDCP could be permitted to be copied by consumers even in limited circumstances. The licenses and associated compliance rules have existed for too long, and too many products and systems implementing HDCP have already been provided to consumers, to permit modifications without severe disruption of existing implementation platforms and without seriously disrupting content provider reliance expectations.
- DCP believes that there is no need to have HDCP-protected content be consumer copiable. Other means of protecting content, such as Digital Transmission Content Protection, SmartRight, or Windows Media DRM, permit transmission of content that may be permitted to be copied. Similarly, various technologies to permit consumer recording have been submitted to the FCC (e.g., Content Protection for Recordable Media, D-VHS, Vidi, MagicGate). Those other protection systems may permit the handoff of content once it has been decompressed, to an interface protected by HDCP for purposes of permitting consumers to enjoy content, whether from an original source of the content (e.g., a DVD player) or an authorized consumer copy of the content.

Consequently, the prohibition on consumer copying of content protected by HDCP is both reasonable and a fact of life at this point. The FCC should approve HDCP as a secure output technology for broadcast flag content, because it provides the requisite protection against unauthorized redistribution of such content (the purpose of the broadcast flag regulations) and because the FCC should also be approving other technologies that permit the consumer copying authorized by its broadcast flag

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regulations. The fact that HDCP occupies a “no copy” niche should not cause the millions of consumers using HDCP enabled audiovisual equipment from the ability to use such equipment to watch broadcast flag content on their displays.

With regard to the “upstream obligations” issue raised in the MPAA comments, DCP notes that it had anticipated this issue in its initial certification filing and responded specifically to those comments in its reply submitted on April 16, 2004. As DCP understands this issue, the “problem” is that DCP’s license requirements do not attach to products until content has been delivered to an HDCP enabled output for protection and transmission using HDCP. However, in order to assure that content so delivered is correctly handled by such an output, certain actions need to be taken by a product that is delivering content for such protection. These actions are “upstream” from the HDCP output and, thus, not covered by the HDCP license obligations. Consequently, to ensure that these actions occur, some other form of legal requirement needs to be in place. For example, when the DVD Copy Control Association (“DVD CCA”) approved the use of HDCP protected outputs for DVD video content that has been originally protected using DVD CCA’s Content Scramble System (“CSS”), DVD CCA included in its own rules the following requirements:

Provided further that the [HDCP-protected] outputs described above may be used by a particular DVD Player only if that DVD Player reads the file on the DVD Disc named ‘HDCP.SRM,’ if present, and passes it to the HDCP Source function as a System Renewability Message, and only if, when passing CSS Data to an output described above, such DVD Player verifies that the HDCP Source Function is fully engaged and able to

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deliver such CSS Data in protected form, which means (i) HDCP encryption is operational on such output, (ii) processing of the valid received System Renewability Message associated with such CSS Data, if any, has occurred as defined in the HDCP Specification, and (iii) there is no HDCP Display Device or Repeater on such output whose Key Selection Vector is in such System Renewability Message.

Section 6.2.1.2, CSS Procedural Specifications (September 2003), available at www.dvdcca.org. DCP has recommended that this approach be adopted in other contexts as well, such as in the DFAST License for Cable Plug and Play.

In this context, DCP proposed in its initial filing that the FCC impose, as an additional obligation applicable to a Covered Demodulator Product that is delivering Unscreened Content or Marked Content to an HDCP-protected output, certain obligations, similar to those required in the DVD context by DVD CCA. The language proposed by DCP is very similar to that put forward by MPAA in its comments.

The question, it seems, is where the legal requirement associated with these obligations should reside. DCP believes that the FCC itself should impose this legal requirement, and that the FCC has the authority to do so in the instant proceeding. As the FCC's broadcast flag regulations state:

(a) A Covered Demodulator Product shall not pass, or direct to be passed, Unscreened Content to any output except: ...

(3) to a digital output protected by an Authorized Secure Digital Output Protection Technology authorized for use with Unscreened Content, in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008.

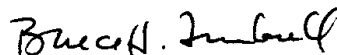
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47 CFR § 73.9003 (emphasis added)..An equivalent provision is applicable to Covered Demodulator Products with regard to passing Marked Content to a digital output. 47 CFR § 73.9004(a)(3). Clearly, the establishment of an “applicable obligation” in this approval process was contemplated and is authorized in the Commission’s regulations. Further, because this proposed approach has been included in this proceeding from its inception (in DCP’s initial March 1 submission), there has been full opportunity for any interested party to know that the proposal has been made here and to submit any comments in this proceeding. Accordingly, DCP reiterates its proposal that the Commission adopt as such an “applicable obligation” the language proposed in its initial certification filing. Such an action will, DCP believes, resolve the issue raised by the MPAA.

If there are any questions concerning these points or other matters related to DCP’s submission in this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,



Bruce H. Turnbull

cc: Rick Chessen
Susan Mort